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In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 11.9.2007.

Mohan Lal ....Petitioner

vs

Ram Kanwar and another .... Respondents.

Judgment

Before : Hon'ble Mr. Justice R.S.Madan.

Present: Mr.Raj Kumar Gupta, Advocate,for the petitioner.
Mr.Arun Palli, Senior Advocate with
Mr.Jai Bhagwan, Mr.Tushar Sharma, and
Mr.Parminder Singh Kanwar,Advocates, for the respondents.

R.S.Madan, J.

This revision has been directed against the order dated 21.1.1994 passed in Civil Appeal No.171 of 1987 recorded by the District Judge, Narnaul, vide which he dismissed the appeal of the plaintiff-petitioner by observing that the same stands abated on account of non-impleading of the legal representatives of deceased Raghbir Prasad defendant- respondent.

Brief facts of the case are that the plaintiff had filed a suit for possession by way of specific performance of the contract regarding the land, detailed in the heading of the plaint. The case of the plaintiff is that Raghbir Prasad (defendant) entered into an agreement with him on 29.9.1982 to sell the plot for Rs.6000/-. The said agreement was scribed by his son Lala Ram ans was attested by witnesses. The plaintiff paid Rs.200/- as earnest money and the remaining amount of Rs.5800/- was to be paid at the time of the registration of the sale-deed. It was also pleaded in the plaint that the plaintiff was ready and willing to execute the sale-deed but Raghbir

Prasad was never ready to execute the same. He also pleaded that he had filed an application before the Sub-Registrar and had brought the balance currency notes, but the defendant did not turn up to execute the sale-deed in his favour. He had also served a legal notice upon the defendant but to no effect. Thereafter, he had filed the above-mentioned suit.

Upon notice, the suit was contested by the defendant by filing written statement, pleading therein that he is not in possession of the suit land and about four years ago he had given the same on monthly rent of Rs.20/- per mensem to one Bishan Dayal for the last four years. He also contended that he had also executed an agreement with him on 29.1.1982, to sell 150 square yards land out of the suit land, for a sum of Rs.10,500/- and had received a sum of Rs.500/- as earnest money. Bishan Dayal is in possession of the suit land as a tenant. Besides other pleadings, the defendant has submitted that he was forced to enter into agreement with the plaintiff to alienate the remaining land measuring 60 yards only. It was also submitted that a plot owned by Inder Lal adopted son and Smt. Mini widow of Beni Prasad was adjacent to their house. He and his son Ram Kumar were using the same since 15-20 years. His Nephew Hanuman Prasad and son Ram Kumar had also obtained a water connection in their names and they were using the plot for tethering cattle. Ultimately, his son Ram Kumar had purchased the said property from Inder Lal vide registered sale-deed no.782 dated 29.7.1982 for a sum of Rs.25,000/-, but the plaintiff, who is a habitual forger, has got prepared a false and forged sale-deed dated 27.9.1982 in favour of Mahabir Prasad son of Bishamber Dayal. Thereafter, he filed an application before the Sub-Registrar, Mohindergarh, for not

attesting the aforesaid sale-deed, but the plaintiff got his application dismissed. Later on, the plaintiff in connivance with the police, had got summoned the defendant and his sons in the Police Station, Mohindergarh, on the basis of the false complaint and due to the fear of the police, the alleged agreement had been executed by him in favour of the plaintiff under coercion. The defendant has prayed that the alleged agreement had not been executed by him with his free will and consent and the same cannot be acted upon. He has also pleaded in the written statement that the plaintiff is in the habit of preparing false and forged documents. He has also raised preliminary objections with regard to locus standi, maintainability of the suit, etc. and that the suit was filed only to harass him.

On the pleadings of the parties, the following issues were framed:-

1. Whether the defendant entered into an agreement of sale regarding the suit property on 29.9.1982 with the plaintiff? OPP
2. Whether Bishan Dayal is in possession of the suit property and defendant Raghbir has entered into a contract of sale with him? OPD
3. Whether the agreement dated 29.9.1982 is fictitious, forged, uncertain, vague, ambiguous, without consideration and obtained under coercion from the defendant? OPD
4. Whether the suit is bad on account of non-joinder of necessary parties? OPD
5. If issue No.1 is proved, whether the plaintiff has no locus standi to bring the suit? OPD
6. Whether the suit is false and frivolous and defendant is entitled for compensatory costs? OPD

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7. Relief.

Parties adduced evidence in support of their respective claim. The learned trial court after evaluating the evidence led by the parties, returned the findings on all the issues in favour of the plaintiff, except on issue no.2 which was partly decided in favour of the plaintiff and partly in favour of the defendant. But in the relief clause, the learned trial court while dismissing the suit of the plaintiff has held that mere oral statement and averments in the plaint are not sufficient to come to the conclusion that the plaintiff was ready and willing to execute the sale-deed. The plaintiff was required to lead cogent and convincing evidence but he has failed to prove this fact.

Aggrieved by the impugned judgment and decree of the trial court, the plaintiff preferred an appeal on 27.10.1987 before the learned District Judge, Narnaul. The appeal remained pending before the District Judge for about seven years. It was on 22.8.1991 that an application was moved on behalf of the respondents that since the plaintiff has not impleaded Kalawati Devi, Pista Devi and Sharda Devi as legal representatives of deceased Raghbir Parsad in the appeal, therefore, the appeal could not proceed and the same may be dismissed as abated. Reply to the application was filed in which this fact was conceded by the learned counsel for the plaintiff. However, it was prayed that if the court thinks proper then all the five legal representatives of the deceased Raghbir Parsad may be impleaded. It was also submitted that rest of the prayer for dismissal of the appeal may be rejected. This application also remained pending for about three years before the learned District Judge. Taking shelter of Order

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41 Rule 20 CPC, the learned District Judge was of the view that the act of the petitioner by not impleading all the legal representatives of the deceased defendant was not bonafide and honest but is an act of negligence and dismissed the appeal as abated.

Dissatisfied with the order of learned District Judge, the plaintiff-petitioner has filed the present revision before this court.

Learned counsel for the petitioner Mr.Raj Kumar Gupta submitted that non-impleading of the daughters Kalawati Devi, Pista Devi and Sharda Devi as legal representatives of deceased Raghbir Parsad was a bonafide act on the part of the plaintiff-petitioner because the learned trial court did not mention the names of legal representatives either in the judgment or in the decree-sheet prepared by it. Due to this fact, the petitioner filed appeal by impleading two sons Ram Kumar and Lala Ram of Raghbir Parsad deceased as party to the appeal. Learned counsel for the petitioner made reference to Order 41 Rule 20 CPC, which is reproduced as under:-

> "No respondent shall be added under this rule, after the expiry of the period of limitation for appeal, unless the Court, for reasons to be recorded, allows that to be done, on such terms as to costs as it thinks fit"

According to the learned counsel for the petitioner, the appellate court had wide discretion and unfettered powers to allow the petitioner to implead any person as a party even after the expiry of period of limitation provided the petitioner makes the case of bonafide mistake. He submitted that the word "**bonafide"** was interpreted by the Full Bench of this court in *Amar Nath and others vs. Mul Raj (deceased) and others*, 1975

PLR 540, and it was held by their Lordships that, "*The expression "sufficient cause" is not defined in the Limitation Act (No.36 of 1963), hereinafter called the Act. It, in my opinion, means a cause which is beyond the control of the party invoking the aid of section 5 of the Act. The test, whether or not a cause is sufficient, is to see whether it is a bona fide cause, in as much as nothing shall be taken to be bona fide or in good faith which is not done with due care and attention.*"

Learned counsel for the petitioner further contended that non-impleading the daughters of the deceased- defendant is a procedural lapse and the same is not to obstruct the aim of justice. In support of his argument, the reliance was placed on *The State of Punjab and another vs Shamlal Murari and another*, 1976 (1) Supreme Court Cases 719, wherein it was observed that , "*We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. Where the non-compliance, tho' procedural, will thwart fair hearing or prejudice doing of justice to parties, the rule is mandatory. But, grammar apart, if the breach can be corrected without injury to a just disposal of the case, we should not enthrone a regulatory requirement into a dominant desideratum. After all, courts are to do justice, not to wreck this end product on technicalities."* The same view was taken in *Mitter Sen and others vs. The State of U.P.*, 1976 (1) Supreme Court Cases 723.

The next argument of the learned counsel was that the first appellate court has erred in observing that the appeal of the petitioner is

abated despite the fact that the two legal representatives of the deceased-defendant were party to the appeal. In support of his arguments, he relied upon *Mohammad Arif vs. Allah Rabbul Alamin and others,* AIR 1982 Supreme Court 948 (1). According to him, once out of the five legal representatives of the deceased, two are already on the record to represent the estate of the deceased, the remaining legal representatives are not necessary.

Learned counsel for the petitioner further contended that there is no limitation for bringing on record the legal representatives of the deceased and they can be brought on record at any time. In support of his arguments, he relied upon *Banta Singh vs. Khajan Singh*, 2001 (2) Civil Court Cases 350 (P&H), wherein it was held that, "*there is no limitation for bringing on record the L.R's of the deceased plaintiff/ defendant. L.R's are entitled to be brought on record at any time. Suit not to abate in case L.R's are not brought on record."* Learned counsel for the petitioner contended that it is a case where the learned first appellate court should have exercised its discretion in allowing the remaining legal representatives of the deceased as party to the appeal because of the bonafide mistake of the petitioner.

On the other hand learned senior counsel for the respondents, Mr.Arun Palli, submitted that Order 41 Rule 20, sub-rule (2) CPC was inserted to impose a check on the power of appellate court to implead any person as a party to the appeal, who was a party to the suit and was interested in the result of appeal and no respondent can be added after expiry of period of limitation for appeal unless, the court for reasons to be recorded allows to be done. The reasons must be such which show that there

was some justification on the part of the appellant not to have impleaded such a person as respondent to the appeal. In support of his arguments, he relied upon *State of Haryana and others vs Shri Om Parkash and others*, 1979 PLJ 448, wherein this court has dealt with this question and decided what is the bona fide and honest mistake and held as under:-

> *"Consequently, before the appellant can invoke powers of this Court under Order 41, rule 20 he has to show that he failed to implead the concerned person as respondent because of a bona fide and honest mistake or due to a mistake made in good faith. The mistake can be said to be bona fide or made in good faith only if the same has occurred in spite of due care and caution on the part of the appellant. When judged in the light of these principles, I find that no case has been made out to allow the appellants to add the said persons as respondents to the appeal as the limitation for filing the appeal had expired long before..."*

Learned counsel for the respondents submitted that it was very much within the knowledge of the petitioner while prosecuting the case before the trial court that Raghbir Parsad defendant has expired and the application was moved by his legal representatives, wherein names of all the legal representatives were disclosed to the petitioner and the counsel for the petitioner has filed amended title of the plaint after signing the same. Despite of the fact that the amended title of the plaint was signed by the counsel for the petitioner and names of all the legal representatives were within his knowledge, the petitioner willingly chose to implead two sons of the deceased- defendant as party to the appeal, is not a bona fide and honest mistake. The legal representatives of the deceased defendant Ram Kumar,

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Lala Ram, Kalawati Devi, Pista Devi and Sharda Devi had appeared in the trial court through their counsel Mr. S.K.Joshi who had filed vakalatnama on their behalf. The petitioner had impleaded Ram Kumar and Lala Ram the sons of the deceased as party to the appeal and had not impleaded the daughters Kalawati Devi, Pista Devi and Sharda Devi. Thus, the petitioner cannot say that the factum of other legal representatives or their particular was not within his knowledge. Reliance was placed on *Ram Phal and others vs Kharak Singh and others* 1974 Revenue Law Reporter 353, wherein this court while dealing with the question of ***bona fide*** mistake held as under:-

> *"Where the defendant died during pendency of the suit and his legal representative was brought on record failure of the plaintiff- appellant to implead the legal representative of the deceased as a respondent in appeal could not be said to be bona fide and honest mistake merely because the name of the deceased-defendant was mentioned in the judgment though the name of the son of the deceased was included in the certified copy of the decree. The mistake was due to carelessness of the appellant as the death of the defendant was within his knowledge."*

Reliance was also placed on *Gurdwara Guru Har Gobind Sahib situated in Village Sur Singh through Baba Daya Singh, Amritsar vs Sham Singh* 1992 (1) Punjab Law Reporter 437, wherein this Court while dealing with the same situation has held as under:-

> "*It took note of the fact that a Court official made a mistake inasmuch as Smt. Ishar Kaur, although, dead was shown as a plaintiff in the copy of the judgment. This mistake would not condone the negligence of the*

> *defendant for reason that Smt. Ishar Kaur had died during the pendency of the suit and her legal representative Sham Singh was brought on record after considerable contest. It would not be believed that the defendant was not aware of the fact at the time of filing of the appeal that the plaintiff Smt. Ishar Kaur had died during the pendency of the suit and no appeal could be filed against that person."*

Learned counsel for the respondents further referred to the Full Bench judgment of the Lahore High Court rendered in *Labhu Ram and others vs Ram Partap and others* AIR (31) 1944 Lahore 76, wherein while dealing with Order 41 Rule 20 and Order 1 Rule 10 CPC, it was held that where party to suit not made party to appeal and limitation expired, he cannot be added as respondent under Order 41 Rule 20 CPC, because this is a special provision and general provisions of Order 1 Rule 10 or Section 151 CPC cannot be invoked.

Learned counsel for the respondents further submitted that suit qua the sons and daughters was dismissed by the trial court and in appeal the daughters were not arrayed as party and only sons were impleaded, the valuable right has accrued to the daughters. The petitioner has not impleaded the daughters as party to the appeal and after the expiry of period of four years, the learned District Judge, Narnaul, was justified in dismissing the application of the petitioner. Reliance was also placed on *Jagan Singh and another vs Mst. Panni and others* 1953 Punjab Law Reporter 449, wherein it was held that "the defendant had ceased to be an interested party and had not been impleaded. His rights were joint with the rights of the other defendants and therefore, the appeal against all the

respondents had to be dismissed."

It is further contended by the learned counsel for the respondents that the daughters were being represented by an advocate in the suit and this fact was in the knowledge of the petitioner but he knowingly not brought them on record, despite the fact that his counsel (of petitioner) had also filed amended title of the plaint duly signed by him. He also relied upon *Ch. Surat Singh (dead) and others vs Manohar Lal and others* AIR 1971 Supreme Court 240, wherein it was held as under:-

> *"Where the son of the plaintiff with other persons was brought on record on the death of plaintiff during pendency of appeal before the High Court and the fact that he was represented by a Counsel was clearly shown in the certified copy of order of the High Court but he was not impleaded as a party in appeal before Supreme Court, the fact that he was so impleaded admittedly being within knowledge of appellants, and the appellants failed to show any good ground for not impleading him, the appeal was liable to be dismissed for want of necessary party to the appeal. An application filed on the date of decision to implead him as party- respondent, held being highly belated could not be entertained."*

At the end learned counsel for the respondents submitted that in so far as daughters are concerned, the decree of the trial court has become final qua them and no appeal has been filed against them till date. Therefore, now to implead the daughters as party to the appeal would result into the passing of two contradictory decrees. In this connection, reference was made to *Himachal Road Transport Corporation and another vs Kishan Singh and others* AIR 1984 Himachal Pradesh 40, wherein it was held

that,"*If decision or success of appeal in absence of deceased respondents in whose favour decree has become final, is likely to lead to contradictory decrees, then whole appeal is to be dismissed as having abated."*

After hearing learned counsel for the parties and going through the law cited by them and the records of the courts below, I am of the view that the petitioner has miserably failed to prove on the record that due to bonafide act the petitioner was unable to implead Kalawati Devi, Pista Devi and Sharda Devi as party to the appeal being the legal representatives of deceased Raghbir Parsad. It is not disputed that an application was moved on behalf of Ram Kumar and Lala Ram disclosing to the court the names of all the legal representatives left behind by the deceased Raghbir Parsad. The amended title of the plaint duly signed by the learned counsel for the plaintiff in which all the five legal heirs of the deceased-defendant were mentioned as defendants was also filed. The factum of Kalawati, Pista Devi and Sharda Devi as legal representatives of the deceased was very much within the knowledge of the petitioner, however, at the time of filing of the appeal in para no.8 of the grounds of appeal, it is specifically mentioned by him that since Ram Kumar and Lala Ram are contesting the case, therefore, they are being impleaded as party to appeal. The appeal remained pending with the District Judge for a period of seven years. During the pendency of the appeal, an application was moved on behalf of the respondents on 22.8.1991 that the petitioner has not impleaded Kalawati Devi, Pista Devi and Sharda Devi as legal representatives of the deceased- defendant in appeal as party, therefore, the appeal could not proceed and requires dismissal on this ground because it stands abated. It is not disputed that due

to non-impleading of proper parties, the appeal was abated. A discretion is, however, given to the court while amending the provisions of Order 41 Rule 20 Sub-Rule 2 CPC that if the appellant makes out a case of bonafide mistake in that event the court can allow to implead any person as respondent even after the expiry of period of limitation unless the court allows that to be done on such terms as to costs as it thinks fit.

In para 8 of the grounds of appeal before the District Judge filed by the petitioner, it has been specifically pleaded that Ram Kumar and Lala Ram are the contesting legal representatives of the deceased so that they are being made the party to the appeal. The learned District Judge did not consider the act of the petitioner as bona fide and dismissed the appeal as being abated. It is a case where valuable right has accrued to daughters Kalawat Devi, Pista Devi and Sharda Devi because the decree of the trial court passed in their favour, has become final. Therefore, now to allow the daughters to be impleaded as party to the appeal would amount to depriving them of the valuable rights vested in them. Even at the time of filing of this revision, no application was moved by the petitioner to implead the daughters as party to the revision petition, therefore, the daughters of Raghbir Parsad never got a chance to represent themselves before the court of appeal as well as before this court in revision.

The observations made in *Amar Nath's* case (supra), wherein their Lordships have held that, "*The test, whether or not a cause is sufficient, is to see whether it is a bona fide cause, in as much as nothing shall be taken to be bona fide or in good faith which is not done with due care and attention.*" Therefore, this authority cited by the learned counsel

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for the petitioner is of no advantage to the petitioner to make out a case of bonafide. It is not a case where there is a procedural lapse in not impleading the three daughters as party to the appeal but is a sheer negligence and, thus, cannot be termed as bonafide act on the part of the petitioner.

The observations made in *Banta Singh's* case (supra), are also not attracted to the facts of the present case for the reasons recorded above. The decree of the trial court qua the daughters has attained finality as no appeal was filed before the first appellate court as well as revision before this court against them.

Thus, from the facts and circumstances appearing before this court leaves no manner of doubt that the petitioner had acted in a most irresponsible and reprehensible manner in not impleading the daughters of deceased Raghbir Prasad defendant, as party to the appeal against whom the decree has become final.

As a sequel to my above discussion, there is no force in the revision petition. The same is, accordingly, dismissed, leaving parties to bear their own costs.

11.9.2007. (R.S.Madan)
vs. Judge.